

CASE ANALYSIS

Subhash Kumar V. State of Bihar, 1991

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INTRODUCTION

The judiciary has played a vital role in ensuring that the right to water gets included in the chapter of the Fundamental Rights in the Indian Constitution. Many social activists have also put in a lot of efforts, and much of it can be credited to the socio-legal weapon, Public Interest Litigation — thanks to which it has become easy to file a lawsuit in the court to contest the infringement of the Right to Water. This imposes positive duties on the state to mitigate environmental harm, by also making use of various legislations and policy execution.

The Supreme Court of India ruled in *Vellore People' Welfare Forum v. Union of India*, 1990, that tanneries had infringed citizens' right to clean water by discharging untreated effluents into agricultural fields and damaging local ground water sources. In *Subhash Kumar v. State of Bihar*, 1991, the Supreme Court expanded the scope of the right to life to expressly include the right to enjoy pollution-free water and air for the full enjoyment of life. The court decided whether the endangerment of a citizen's quality of life can be challenged constitutionally under Art. 32. The court contemplated a broader reading of Art. 21, which would provide residents with a healthy environment. The court further proceeded to determine the basis for the maintainability of the PIL in the case of a violation of constitutional freedoms under Art. 32.

This article examines the landmark case of *Subhash Kumar v. State of Bihar* (1991) by first providing background information on the case and then critically evaluating the problems and issues that arose in the court of law

FACTS

Subhash Kumar filed the petition as a Public Interest Litigation to avoid contamination of the river Bokaro's water due to the release of sludge/slurry from Tata Iron & Steel Co. Ltd. washeries. The Petitioner claimed that the Water (Prevention and Control of Pollution) Act, 1978 was passed by Parliament to ensure the cleanliness of water and to avoid pollution. The State Pollution Control Board was established to carry out the responsibilities set out in Section 17 of the Act. The Board is recommended to examine trade effluents and sewage treatment plants, as well as evaluate data and standards for water treatment. No one should intentionally create or permit discharge of any harmful or contaminating materials in the river, according to Section 24 of the same legislation. The Petitioner claimed that the Tata Iron and Steel Company executed mining activities in Jamshedpur, commonly known as the West Bokaro Collieries.

The Petitioner claimed that the waste from the washeries is dumped as effluent in the Bokaro River, where it is deposited on the riverbed and settles on the ground, including Plot No.170, which is Petitioner's land. He further stated that the sludge released in this manner is absorbed by agricultural soil, forming a fine carboniferous layer. He further claims that the outflow of sludge from the washeries pollutes the water, rendering it unfit for irrigation or drinking. Despite many objections, the State Pollution Control Board was unable to take action against the Company, allowing water pollution, and instead, the State of Bihar issued a lease on the payment of royalty for slurry collection to various people.

As a result, he has requested that a direction be issued instructing the Respondents, that include the State of Bihar, the Bihar Pollution Control Board, the Union of India, and Tata Iron & Steel Co., to take proper measures to prevent water pollution of the Bokaro river from slurry discharge and to take further action against TISCO under the Act's provisions. The defendants' counter-affidavit entirely denies that sludge is discharged through washeries into the river Bokaro so there is no contamination of the river water. It further claims that the Board has taken all the preventive measures to maintain the quality of water.

ISSUES

The case focuses primarily upon the issue of maintainability of a public interest litigation filed in the court on the basis of it being in the interests of public or for promotion of any self-interest. The court also faced the issue of whether right to life also includes the right to pollution free environment and safe surroundings and whether in the present case, river Bokaro is being polluted or not by the respondents. All these issues before the Supreme Court can be summarized as follows: :

- 1) Whether the PIL is maintainable or not and on what grounds?**
- 2) Is the water of the river Bokaro contaminated by the release of sludge/slurry from the Respondent's Company's washeries?**

The above issues are primarily concerned with the following rules:

- Article 226 of the Indian Constitution, 1950.
- Article 32 of the Indian Constitution, 1950.
- Section 25 and 26 of Water Prevention and Control of Pollution Act, 1974.

ARGUMENTS ADVANCED

On behalf of the Petitioners:

The Petitioner claims that excess waste dumped in the river in the form of sludge/slurry as effluent from washeries leaves a carboniferous product on the soil, affecting the land's fertility. He further claimed that the water going to remote locations is unfit for drinking or irrigation, and that the continual outflow of sludge from Tata Iron & Steel Co. posed a significant risk to health of the people living in the areas. He further claimed that the water going to remote locations is not potable, unfit for drinking or irrigation, and that the ongoing outflow of sludge from Tata Iron & Steel Co. posed a significant risk to people's health. In his plea, he pleads the court to order the State of Bihar and Bihar Pollution Control Board to keep a check and take immediate steps for curbing pollution in the Bokaro river. He requests that the State of Bihar, Bihar Pollution Control Board, be directed to take urgent action to reduce pollution in the Bokaro River caused by the discharge of sludge from Tata Iron and Steel Co. Ltd.

On behalf of the Respondents:

The respondents' lawyers claimed that the Bihar Pollution Control Board has taken all appropriate steps to avert contamination of the Bokaro river. The Board has approved the Tata Iron & Steel Co. to release industrial effluents from its outlets under Sections 25 and 26 of the Water Prevention and Control of Pollution Act, 1974. Before allowing the effluents from the washeries to be discharged into the Bokaro River, the Board conducted an analysis and monitored to ensure that the effluents did not contaminate the river. It was also said that no effluent was discharged into the Bokaro River, that there was no contamination of the river, and that the fertility of the soil was unaffected. The Company ensured that no sludge escaped from the pond, since it is a highly important fuel source. Because the slurry has a high market value, the firm cannot afford to let it rot in the river, and the company has taken the appropriate precautions to ensure that no slurry leaks into the river. The counsel also said that the company followed the rules and guidelines as stated by the State Pollution Control Board Act, 1974.

JUDGMENT AND RATIO DECIDENDI

The Court in the case of *Subhash Kumar v state of Bihar & Ors.* held that the Public Interest Litigation was not filed in the interests of larger public good but there was a personal interest involved of the petitioner. On behalf of the materials on record and keeping in view the facts, the court observed that the petitioner had his own self-interest and thereby the petition could not be maintainable in the court of law. The court dismissed Subhash Kumar's plea and he was also ordered to pay Rs. 5000/- to the Respondents as costs.

The judgment was held by the two-judge bench consisting of Justice K.N Singh and Justice N.D. Ojha in 1991. Both the judges unanimously ruled in favor of the respondents. They were of the view that petitioner was not concerned with the interests of the public and he was neither worried about the ill effects of the pollution towards the environment or the public. The main purpose of having PIL as a remedy gets defeated when the petitioner prioritises his own self-interests rather than public interest.

The petition itself contains proof that the primary goal of submitting this petition is not to represent the public good but rather to satisfy one's own self-interest. For some years, the petitioner has been acquiring slurry from the companies. He demanded more and more sludge as time went on, but the firm declined to comply with his demand. He took the company's slurry in an unauthorized manner, for which he and his brother are facing criminal charges. He had a grudge against the respondent firm since it refused to sell extra slurry, and in order to deepen his personal resentment, he filed multiple lawsuits against the respondents. The Petitioner filed many petitions before the Patna High Court under Article 226 of the Constitution, requesting permission to collect slurry from the area. Later in the proceedings of the case, the Board was not found to be at any fault by the Court, as alleged by the petitioner, and in fact it had completed its whole responsibility by inspecting the industry's operations. It was discovered that the industries were not engaged in any of the petitioner's claims. As a result, the petitioner was at fault and had wasted the court's time. So the petition was rejected by the court.

The court in this case, also focused upon the ambit of Article 21 of the Indian Constitution and stressed on the need to widen its scope by promoting people's right to live with a pollution-free environment. But the court decided against going into further detail since the petition was not submitted in the public interest, but rather for personal gain.

ANALYSIS

Regarding the primary issue of the maintainability of the PIL filed by Subhash Kumar, the court determined that the State Pollution Control Board had taken appropriate measures to prevent effluents from the industries from being discharged into the Bokaro river. Thus it dismissed the petition. Furthermore, it was decided that a person seeking to invoke the Court's powers under Art. 32 must do so in order to preserve the basic rights of those harmed, not to defend his personal grievance or animosity. The court found itself to be responsible to dissuade such appeals and make sure that the course of justice is not hindered or corrupted by dishonest petitioners by invoking the extraordinary jurisdiction of the Court for personal matters under the guise of public interest litigation, as has already been established in *Bandhua Mukti Morcha v. Union of India*, *Pandey v. State of West Bengal*, and other cases. Adopting the same principle in this case, the court determined that the petition was not filed in the public interest because it was motivated by the petitioner's desire to obtain larger quantities of waste in the form of slurry from one of the respondent companies, from whom he had begun purchasing slurry from several years prior to the filing of the petition.

In this case, the court also observed that Article 21 contains the “enjoyment of pollution-free water and air for the full enjoyment of life”. Individuals are entitled to a remedy if environmental pollution occurs, which includes “removing the sources as well as the contamination of water or air that may be harmful to the quality of life”. However, while acknowledging citizens' fundamental rights, the court did not seek to enforce them by simply dismissing the petitioner's PIL. As a result, it's possible that the court in this case just skimmed over the right to a healthy environment. That being said, the Court dismissed the motion just on the basis of the plea not being maintainable and did not delve deeply into the cruxes of the matter which was harmful effects of the pollution on the health of the public. After dismissing the plea, the Honorable court should have ordered the state bodies to once again conduct proper monitoring of the state of the affairs so as to ensure properly that there is no such harm to the health of the public or the environment.

Nonetheless, the acknowledgment of such a right increased the scope of Art. 21 in the Indian Constitution. Judgments such as that of *Subhash Kumar* are welcomed in the legal world so as to at least ensure there is no misuse of the wide-reaching freedoms granted to the citizens of the country.

CONCLUSION

It may be inferred from the analysis of the above case that the laws often get abused due to many loopholes present; however stringent the provisions are. This happens mostly when public interest is neglected in favor of personal gain, as in this instance, where the petitioner was judged to be at fault rather than the respondents. The intention of the petitioner to file a plea was ultimately guided by personal motives and thus the main aim of having PIL as a remedy for greater public good gets defeated in this case. It is the court's responsibility to not accept such useless petitions in order to prevent miscarriages of justice for people. the court stated that if environmental contamination occurs, a solution to eliminate the pollution is permitted. Through its judgments, the judiciary plays a critical role in advancing environmental governance, maintaining the rule of law, and establishing a rational equilibrium between environmental, social, and developmental issues. Since the right to water is a fundamental right in our federal system, it is well known that the Supreme Court has been vigilant, specifically on the topic of ground water restoration as an important component of the State's obligation. The emergence of the fundamental right to water, thus, is the result of judicial pronouncements and not any legislature, when interpreting Article 21 of the Constitution, the right to life, in such a way as to embrace all aspects of life as well as the right to a clean environment to preserve life. The Hon'ble Supreme Court of India has frequently upheld this in cases such as this one, noting that the right to water is implicit when the right to a clean environment is recognized under Article 21 of the Constitution.

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